# POLITICAL AND MUNICIPAL LEGISLATION IN 1897.*

While the great majority of the well-nigh innumerable laws passed by the forty state legislatures which held sessions in 1897, were of the usual routine and insignificant character, quite a number of the statutes are interesting and noteworthy as innovations in administration, so far at least as our own country is concerned, while others extend to additional states important principles already proved successfully applicable by sister commonwealths. It is one of the advantages of the federal system that individual states can undertake legislative experiments, without risk of injury to the entire nation, while all the other states may profit by the knowledge thus obtained as to the effect of such legislation. We are able to a certain degree to apply laboratory methods to politics. It has always been our western states which have shown themselves specially prone to enter upon untried paths in government, but, as might be expected, the great western Populist agitation of the past few years has resulted in the enactment of even more innovating legislation than usual. Some of the new measures are doubtless steps, though often stumbling ones, in the right direction; others are mere fleeting foam on the radical wave. In either case, however, they are worthy of study, both as possible guides, positive or negative, for legislation elsewhere, and as showing the temper of those classes who are bound, in their awakening, so strongly to influence our national life.

*The Delaware Constitution.*—While containing little that is novel from the standpoint of state legislation in general, the new constitution of Delaware, framed by a convention

* Previous papers in this series have appeared in the ANNALS for May, 1896, Vol. vii, p. 411, and March, 1897, Vol. ix, p. 231. Reference to them will aid in interpreting the significance of the legislation of 1897.

which met in December, 1896, presents very great changes from the former state constitution, which dated back as far as 1831. The constitution, in accordance with the practice more common in the South than the North, was promulgated by the convention itself, without submission to the people. After the fashion of most modern state constitutions it extends greatly the scope, and increases the minuteness of the regulations placed by the people upon their representatives and rulers. It introduces more democratic in place of the earlier aristocratic institutions. Thus the requirement that state senators be property owners is repealed, as is the restriction of the suffrage to those who have paid their poll and other taxes. On the other hand, however, the educational qualification for voting is introduced; those hereafter becoming electors must be able to read the constitution in English. The governor's power of appointment is now made subject to confirmation by the senate, but he is given the veto power, which was hitherto lacking. The attorney-general, state auditor, treasurer and commissioner of insurance, heretofore appointed officers, are now to be elected by popular vote. Many important commands and restrictions concerning legislation are introduced, not a few of these being provisions scarcely with propriety placed in a constitution or fundamental law. Special acts granting divorces, creating corporations or affecting various classes of local affairs are prohibited, though, as is natural enough in so small a state, local legislation concerning cities and certain other matters is not forbidden. Among the numerous other new regulations, the most interesting are the requirement that local option be given as to the suppression of the liquor traffic, and the strict prohibition on the issue of stock by corporations except for cash or for property or labor at their actual cash value.

*Suffrage.*—In view perhaps of the defeat of woman suffrage in the adjoining and precedent-giving State of California, the Nevada legislature failed to approve the constitutional

amendment granting women the ballot, which was submitted to it by its predecessor in 1895. In Oregon the conflict over the election of a United States Senator prevented entirely the organization of the legislature, so that the similar constitutional amendment, proposed in that state in 1895, was not voted upon. South Dakota, however, which is taking a prominent place as a leader in innovations, has submitted the question of woman suffrage to popular vote at the election of 1898. The recent marked tendency toward requiring educational qualifications for voting continues to manifest itself. The provision in the new Delaware constitution has been already mentioned. The North Dakota legislature has proposed to its successor a constitutional amendment introducing the educational test; while in Connecticut the amendment providing that the required reading of the constitution shall be in English was adopted by popular vote last September. Compulsory voting, an entirely new departure in this country, is proposed by North Dakota in a constitutional amendment, submitted to the next legislature, authorizing the establishment of penalties for failing or refusing to vote. The progress of the amendment and the working of the measure, if it is actually adopted, will be watched with great interest.

*Primary Elections.*—Now that so much progress has been made by secret ballot and corrupt practices acts toward purifying the election polls, legislators are turning growing attention to the even more important and difficult problem of reforming the nomination system. The provision, found in all the Australian ballot laws, for independent nominations by petition of a certain number of voters, has accomplished little. The caucuses and primaries of the great political parties themselves must be reorganized so as to prevent the domination of corrupt machines and to permit a free expression of the will of the entire membership of the party in the selection of candidates. Massachusetts, by her laws of 1894 and 1895, has done perhaps more than any

other state in this direction, but California and Wisconsin are not far behind. The act adopted by the former state in 1895, for San Francisco only, has now been improved and extended throughout the state. It provides that all parties must hold their primary elections, for choosing delegates to nominating conventions, at the same time and place and under the joint supervision of officers elected by the county election commissioners from representations of the leading parties. The number of delegates is officially fixed, and official election registers are used to determine the qualification of voters. Each voter may cast his ballot for delegates to the convention of any one party he sees fit, on taking oath that he expects to support the party at the election. Rigid provisions are made to prevent fraud, "packing" of primaries, etc.; while, following the example set by Ohio last year, each candidate is required, after the convention and before election, to make a detailed statement of his expenses incurred for the purpose of securing the nomination, the total of such expenditures being limited on the same principle as are those of candidates for election. The Wisconsin law of 1897 is likewise based on one of 1895, which applied to Milwaukee city and county only. The present act is mandatory in all cities of over 10,000 population, and may be adopted by any town, village or city on popular vote. Each party has a separate primary and chooses its own officers. Preliminary meetings are, however, called a few days before the primary, at which any person may, at will, propose names of delegates to the party convention. The names are all placed, in an order to be determined by drawing at random, on a blanket ballot. The voter at the primary, in secret, marks a cross opposite those whom he wishes for delegates, up to the number to which the precinct is entitled. Any voter duly qualified, as shown by the official election registry lists, must be allowed to take part in the primary, provided that, in case he is challenged, he swears that he voted for the party at the last election.

Missouri also adopts, for St. Louis only, a primary election law with some improved features, and Delaware enacts somewhat similar provisions for New Castle county, the seat of the city of Wilmington.

*Elections Generally.*—We have already noticed in previous years a tendency among various states to amend the Australian ballot laws in such a way as to make party voting, as distinguished from independent voting, easier. This movement was carried further by the legislation of 1897. Three states, New Hampshire, Nebraska and Wyoming, joined the several which had already changed the form of the blanket ballot from the original arrangement of candidates alphabetically, under the name of the office, to the arrangement in party columns, giving an opportunity for "straight" voting of the entire party ticket. Nearly half of the states introduced at first the alphabetic ballot, but barely a third of them now retain it. The party column blanket ballot is used in all the others except Connecticut, New Jersey and Missouri, the latter state having in 1897 abandoned it. These three states provide separate ballots for each party. The elector is given a ballot of each kind and casts secretly the one which he selects. He may make, of course, such modifications as he wishes in the ticket, but obviously he will be somewhat less apt to vote a mixed ticket than under the blanket ballot system.

Another measure which seems to tend against the freest action of the popular will in selecting officers, had already been enacted by Michigan and Ohio in preceding years, and was adopted by Illinois, Indiana, North Dakota, Wisconsin and Wyoming in 1897. This provides that no candidate's name may appear as the nominee of more than one party or group of voters, but that a person so nominated must formally select the party or group for which he wishes to run. A Pennsylvania law allows the candidate to appear once as a party nominee and once as a nominee by paper, but no more. Partial fusion of parties in the nomination of candi-

dates is thus checked. It is difficult to discover sufficient justification for this restriction.

The movement toward the use of ballot machines continues. Minnesota joins the few states which authorize their employment in all elections, while California provides for a commission to examine instruments and report an act to the next legislature. New York and Michigan have extended somewhat their existing provisions for the use of these improved devices.

*Corrupt Practices.*—Wisconsin was the only state to enact during 1897, a general corrupt practices law, such as have become popular of late years, defining offences against the suffrage, requiring reports of expenditures by candidates and committees, and restricting the purposes of such expenditures. Her law is, however, relatively rudimentary, lacking especially those limitations on the amount of outlay by candidates which have usually been embodied in the more recent acts. One new feature is the prohibition of contributions to promote the nomination or election of state assemblymen and senators, by persons living outside the district for which they are to be chosen. A more important innovation has been adopted by Tennessee, Missouri and Nebraska. These states forbid absolutely contributions by corporations to parties or candidates, or for influencing elections in any way. It has been charged that the railways exercise a strong influence in politics in these and other western states, and while both the propriety of such unqualified prohibition and the possibility of preventing the abuse by laws alone may be questioned, some step in this direction was doubtless expedient. The example will probably be followed by other states. California, always in the van,—so far, at least, as mere legal enactments go,—in the attack on political corruption, has prohibited solicitation from candidates for any state or local legislative body of promises to support or oppose a particular measure or policy in case of election, as well as the making of such promises by candidates. Public declarations of principles are, of course, excepted.

A somewhat curious and entirely new measure, adopted by Indiana, gives legal recognition to the polling of voters by political parties. Before election any party is entitled to take such a poll and to require answers from voters themselves, or from heads of families, hotel and lodging house keepers, concerning the names, residence and qualifications of voters.

*The Initiative and Referendum.*—The movement in favor of direct legislation by the people, which has manifested itself of late years in the increased practice of referring specific subjects of state or local legislation to popular vote, and in the increasing agitation for a general use of the initiative and referendum, has at last culminated in some of our western states. South Dakota goes furthest by proposing a constitutional amendment, to be voted upon in November next, declaring that

"the people reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, . . . provided that not more than five percentum of the qualified electors of the state shall be required to invoke either the initiative or the referendum."

The sister State of Nebraska has meanwhile enacted a law, to take immediate effect, introducing the same principle for all local subdivisions,—counties, townships, cities, villages and school districts,—but not for the state government itself. A petition of 15 per cent of the voters is necessary to initiate measures, or to demand the reference of proposed measures to the people. The question must then be submitted to a vote at the next general election, but if the petition be signed by 20 per cent of the electors and contain a request for a more immediate vote, a special election must be held. The local legislative body may suggest amendments to measures proposed by popular initiative. In such case the original and modified propositions must both be placed on the ballot.

Unless a majority declares itself against both forms, the form receiving the most affirmative votes becomes law. The introduction of the initiative and referendum in certain cases to county government in California and to city government in Minnesota will be described under another head.

*Civil Service.*—The steady progress of civil service reform in state and nation has at last aroused the professional politicians to the danger of losing their means of sustenance, and attacks of unusual virulence have recently been made on the merit principle in appointments. By holding up rotation in office as a part of the democratic ideal, and by pointing out the occasionally impractical character of civil service examinations, the spoilsmen have succeeded in checking, doubtless only temporarily, the forward movement. In Maryland, indeed, they brought about the defeat of the proposed constitutional amendment providing for the examination system, by the great majority of 84,391 to 15,875. Moreover, the civil service law in New York has been made over on a plan proposed by Governor Black, who aimed to "take the starch out" of the system. While the governor was probably fairly sincere in his purpose of making the administration of the civil service less doctrinaire and more business like, the new law can scarcely fail to act as a loophole, to those officials who seek to make it such, for practically complete admission of the spoils principle. Hereafter the examinations given by the civil service commission are to determine only the "merit" of the applicant for office, and are to count only one-half in this grading. The appointing officer is to "examine" and grade the candidate as to his "fitness" for the position—this division of the tests being based on a supposed distinction in the meaning of the words "merit" and "fitness" in the state constitution. There is absolutely no direction in the statute as to the nature of the examination which the appointing officer shall make—apparently it might consist merely of looking at the candidate or of feeling the wires pulled in his

favor. The sum of the grades given by commission and appointing officer fixes the final rank of the candidate.

The practice of giving preference to veteran soldiers and sailors in public employment, which is deprecated by many civil service reformers, nevertheless continues to find favor with state legislatures. Michigan and New Jersey are added to the states which have required that veterans be preferred in state and local appointments, and have forbidden their removal except for cause, after hearing. Illinois also provides that soldiers and sailors passing the local civil service examinations shall be placed ahead of other candidates, regardless of their relative grading.

While civil service reform has thus been set back somewhat in a few states, it has made minor advances in Wisconsin and Pennsylvania. The former state extends her law of 1895, applying to the city of Milwaukee, to the Milwaukee county government, and improves it in various ways, notably by prohibiting assessments on office holders for political purposes or the use of political influence to secure appointments or promotions. Pennsylvania likewise prohibits political assessments, but specifically allows voluntary contributions by office holders. An absolute prohibition of payments by appointive officers for political objects will probably be the next step.

*State Legislatures.*—An interesting constitutional amendment is proposed in California for action by the people in November, 1898. This is to lengthen the maximum duration of the legislative session from sixty to seventy-five days, and to require that after the first twenty-five days of the session a recess of not less than thirty nor more than sixty days shall be taken. No new bill may be brought in after this recess except by consent of three-fourths of the members present. While this latter exception will in practice probably allow the introduction of very many bills of a less important nature, the change will certainly tend to give more time for discussion by the legislators and for the

formation and ascertainment of public opinion. So far as the sounding of popular sentiment may be the object of this proposed measure, it bears some relation to the broader movement for direct legislation.

Tennessee has attempted the impossible in enacting a law prohibiting absolutely lobbying with members of the legislature. Lobbying is defined as "personal solicitation by private interview, letter, message or other means or appliance not addressed solely to the judgment." West Virginia briefly and without defining the term prohibits lobbying on the floors of the legislative halls themselves; but apparently convenience is the chief object of this act.

*Local Government Generally.*—A law of some interest as showing the increasing decay of the old self-governing township system with the growth of population, is that passed by New York last year, providing that town meetings shall hereafter be held only once in two years instead of annually, and giving township officers a biennial term. The direct control of the people in the government is thus considerably reduced. In fact the initiative and referendum are apparently fast taking the place of popular assemblages as a means of expressing the people's will in local affairs. Aside from the instances already mentioned where the system is introduced in general form, two states last year adopted it for specific cases. In California it is enacted that whenever 50 per cent of the voters of any county petition for the passage of an ordinance or measure of any kind, the county supervisors must submit it to vote, a majority of the ballots cast on the proposition being sufficient to determine its adoption or rejection. The same state has also introduced for counties the practice already employed for cities, of allowing the people themselves, by majority vote, to adopt a frame of government, to be drafted by a board of fifteen freeholders elected by the qualified voters. Such a measure may regulate the character, terms, salaries, etc., of officers, the manner of conducting primary and general elections and various

other weighty matters. The legislature may approve or reject the law as a whole, but has no power to amend it. In Minnesota, where the people adopted in 1896 a constitutional amendment allowing cities to frame their own charters according to the California plan, an act, framed on very broad lines, was passed in 1897 to carry the measure into effect; and a further constitutional amendment was proposed to be voted upon this November, providing that, on petition of five per cent of the voters of a city proposing an amendment to a charter adopted in this way, the amendment must be submitted to popular vote.

*The Greater New York Charter.*—One of the most important political events of 1897–98 was the consolidation of Brooklyn and numerous smaller municipalities with New York City, thus forming a metropolis second in size to London. The charter which is to govern this huge city was framed by a commission of fifteen members, some eminent as publicists, others of more doubtful fame as politicians and office holders. The time given to the preparation of the measure was confessedly far too short. Though disapproved by many thoughtful citizens, and though "vetoed," under the provision of the state constitution, by Mayor Strong of New York, the bill was rushed through the state legislature under party coercion with very inadequate consideration. The charter, while representing no little study and the doubtless sincere beliefs of the majority of the commission, leaves much to be desired. It perpetuates the most anomalous features of the former law governing New York City, and its innovations harmonize little with existing institutions.

The charter commission has sought to rehabilitate the city council, which had become a mere laughing stock, by establishing an upper and lower board, by giving the former a four years' term, and by increasing the number of the lower body to sixty, as well as by restoring to the council some powers which had been taken from it. But the division of the council is of doubtful advantage, the increased

membership is scarcely commensurate to so immense a population, and the power granted is still but limited, so that, in all probability, little will be accomplished toward making the council the real central authority in government. The illogical and peculiar "board of estimate and apportionment," composed of five leading executive officers, is retained. While its previously absolute control in fixing the city budget is now shared with the council, which may reduce but not increase its appropriations, it is likely that the board of estimate, which has control in many other directions also, will continue to be as heretofore the power behind the throne.

One real step in advance sought by the new charter is the granting of greater "home rule" to the city. Heretofore all enterprises requiring bond issues, no matter how small, have had to be specifically authorized by the legislature. Such enterprises may now be instituted by the city alone, but subject to the co-ordinate control of the city council, the board of estimate and a new "board of public improvements." This arrangement, designed to prevent abuse, has gone too far in its establishment of checks and balances; it can scarcely fail unduly to divide responsibility or to bring about deadlocks. Moreover, there is nothing to prevent future legislatures from directly or indirectly disregarding or repealing the grant of home-rule.

Probably a more important reform step than that just described is the new regulation of public franchises. Competitive bids, which have usually proved so unsatisfactory in the case of street railways, where they are required by the general state laws of New York, are not to be introduced for disposal of other franchises. All grants, however, both of railway and other privileges, require concurrent approval of the board of estimate and of three-fourths of the members of the city council. The former body is required to consider carefully the conditions and value of the franchise and to fix rates of charge to the public, compensation to the city,

and other terms. Most significant is the limitation of the duration of franchises to twenty-five years, although the city may agree to renew the grant to the same persons at a fair revaluation for not more than twenty-five years longer.

The mayor of Greater New York is to have a four years' term instead of two years, as before. He retains the sole power of appointment, but his right of summary removal is restricted, as under the previous law, to the first six months of his term of office—contrary to the advice of Mayor Strong, who wished it made absolute. There is still little uniformity or system as to the composition or term of office of the various departmental heads, some of which are single officers, others boards of varying size and character.

*Municipal Franchises.*—The recent and growing popular agitation concerning the management of municipal property, works and privileges is beginning to bear fruit in legislation. A large proportion of our states now allow cities and towns themselves to construct and operate lighting as well as water plants. Washington last year went further and authorized the establishment of municipal street railways. Especially is there a tendency to regulate the granting of franchises to private individuals and companies. The chief advances are in limiting the duration of such grants, in demanding some commensurate payment for them, and in making them subject to direct popular control. The provisions of the new charter of New York in this regard have just been described. Far more radical is a Kansas law of 1897, which, however, applies only to light, heat, power and water plants. This act requires the grantees of franchises to report in minute detail the exact cost of constructing their plant, and semi-annually thereafter the exact receipts and expenditures of every sort. A profit of six per cent per annum is to be allowed on the actual investment shown by these statements, and the entire surplus of receipts is to go to the public treasury, unless a higher allowance be made to the holders of the

franchise by consent of three-fifths of the taxpayers. No grant may be for more than twenty years, and after ten years the municipality may buy the plant at an appraised valuation. This law, imposing terms even more severe than those regulating public franchises in any European city, will, if strictly enforced, probably hinder investment of capital in municipal enterprises and, while perhaps just theoretically, may prove of doubtful expediency. Had provision been made for sharing between city and franchise-holder the surplus profits, the law would be more advantageous.

Several other states have adopted the practice of requiring franchises of all sorts to be disposed of upon competitive bids. While this system may prevent jobbery, in part, experience shows that it does not ordinarily win for the public a reasonable payment for privileges granted. Real competition is seldom possible, especially in the case of renewals or additional grants after one corporation has become thoroughly established. California, adopting this practice in 1897, prescribes further that the minimum payment to the municipal treasury for any kind of public franchise shall be three per cent of the gross receipts. No payment whatever is to be made, however, during the first five years of the grant. Wisconsin has passed a somewhat similar law, whose adoption is left to local option. The municipality is to fix such conditions as it sees fit as specifications in advertising for bids. Annual reports of gross receipts must be made by grantees of franchises, whether percentages upon them are demanded or not. The terms of franchises may not be altered without consent of the holders. Regarding light and water plants it is further enacted by another law that any proposed franchise may be submitted to popular vote and must be so submitted if twenty per cent of the voters petition. Minnesota prohibits all perpetual franchises, and provides that, if privileges are made exclusive, they must be limited to ten years and approved by popular vote. This latter provision signifies

little since evidently a large proportion of such grants, though not exclusive formally, are so practically.

Specific conflicts concerning public monopolies in New York City and in Chicago led last year to the enactment of two laws, one marking a partial, the other a complete surrender to the corporations. The well-known enormous profits of the gas companies in the former city led to a movement to reduce the price by law from $1.25 to $1.00 per thousand feet, but the companies succeeded in modifying the bill so that the reduction will take place gradually, by five cents each year, instead of summarily. A measure really designed to prevent the Chicago city council from reducing street car fares took the form of a general act declaring that the right to charge five cent fares, granted by existing ordinance in any city, may not be taken away during the term of the original franchise; and that city councils may extend any street railway franchise,—without the consent of abutting property owners which is required for the original grant,—for fifty years, the rate of fare to be not more nor less than five cents during the first twenty years. On new grants the fare may be fixed at any rate not over five cents, but may not then be altered for twenty years.

*Miscellaneous Legislation.*—Some of the numerous important laws of a less directly political or municipal character may be briefly mentioned. New and interesting is the Pennsylvania act requiring that all employers of unnaturalized foreigners must pay three cents per day tax for each alien laborer during his employment. The preamble of the law frankly states its purpose to restrict unfair competition with citizens. Employers must also pay poll and other taxes assessed against such laborers, deducting them from wages.*

* The act was declared unconstitutional, in the case of Fraser *vs.* McConway, by the United States Circuit Court for the Western District of Pennsylvania, on August 26, 1897. (Reported in Pennsylvania District Reports, Vol. vi., p. 555.) The case has been appealed to a higher court, whose decision is pending.

The apparently great success, during the short period of its operation, of the New York law of 1896, prohibiting the contracting out of convict labor and providing that prisoners shall be employed only in manufacturing goods for use in public institutions, has led several states to take steps in the same direction. Indiana alone adopts a thoroughgoing measure on the New York pattern, but Massachusetts, Nebraska, Michigan, Tennessee and North Dakota have passed partial or preliminary acts with this end in view. Another prison reform movement which has made rapid strides of late years is that providing for indefinite sentences and paroles, except in the case of most heinous crimes, or of habitual criminals. Indiana, Connecticut, Idaho and Alabama last year passed laws, of varying degrees of fullness and excellence, on this important subject. The practice already adopted by various states, of placing the pardoning power of government, so often abused, under the co-ordinate control of a board of several members, was further introduced by Minnesota, Illinois and Washington in 1897, while Delaware's new constitution and a proposed constitutional amendment in North Dakota provide also for boards of pardons. Colorado has abolished capital punishment.

Arkansas, apparently under populistic influence, has established an *ex-officio* board to construct and operate one or more state railways. Wishing to avoid the experience of Tennessee, which earlier burdened itself with a heavy debt by building railways, Arkansas provides that the road shall be paid for by donations of money and land from local authorities, and by the issue of bonds secured solely by the road itself, and not binding the state as such. Whether such capital will keep such an enterprise is questionable.

The Torrens land transfer system was adopted by California in 1897, while Illinois revised her law of 1895 so as to cure the unconstitutional features pointed out by the courts.

Inheritance taxes continue to grow in favor, and direct inheritances are coming more and more to fall under levy,

although at a lower rate than collateral inheritance. Montana and Minnesota last year established the tax on both kinds of inheritance, while Connecticut and Pennsylvania, which already had the collateral tax, have extended it to direct inheritances also, the former at one-half of one per cent on all property above $10,000, the latter at two per cent on all above $5000. A law introducing a strongly progressive rate into the existing collateral inheritance tax was adopted by the New York legislature, but was vetoed by the governor. North Carolina and South Carolina have both adopted progressive income taxes, perhaps the most radical tax legislation yet passed among our commonwealths. The former state levies five per cent on income from property not otherwise taxed, one-half of one per cent on income from salaries and fees, and from one-fourth of one per cent to two per cent on all other incomes according to their amount, the highest rate applying to all incomes over $20,000 yearly. The South Carolina law proposes to tax incomes from whatever source at a rate graduated from one per cent on those between $2500 and $5000 to three per cent on those above $15,000. It is to be feared that the imperfect tax machinery of these southern states will fail to give a fair test of the working of the progressive income tax.

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